

JUDY H. GENDER

IBLA 81-133

Decided October 27, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring mining claims abandoned and void. U MC 173832 through U MC 173840.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

2. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in the county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: Judy H. Genger, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Judy H. Genger has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated October 23, 1980, declaring her nine lode mining claims abandoned and void for failure

to file timely evidence of annual assessment work or a notice of intention to hold the claims prior to October 22, 1979, as required by 43 CFR 3833.2-1(a).

Appellant's mining claims were all located prior to October 21, 1976, and filed for recordation with BLM on October 22, 1979. See Appendix A. Appellant did not file either evidence of assessment work or notice of intention to hold the claims on or before that date. On September 9, 1980, BLM received copies of notices of intention to hold the claims for 1979-80 and proof of annual assessment work for assessment years 1979 and 1980 for appellant's claims.

[1] Section 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1) and (2) (1976), and the accompanying regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located before October 21, 1976, shall, on or before October 22, 1979, and prior to December 31 of each subsequent year, file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim. Failure to file the required documents is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

When appellant failed to file either an affidavit of assessment work or a notice of intent to hold the claims on or before October 22, 1979, BLM properly held the claims to have been abandoned and declared them void. Stanley Bishop, 50 IBLA 371 (1980); Donald D. Vesely, 50 IBLA 277 (1980); John J. Schnabel, 50 IBLA 201 (1980).

Appellant does not deny that she failed to submit the requested information by October 22, 1979. She states, however:

(1) The act of timely filing the location notices, the claims map and payment of the fee was without a doubt conclusive evidence that there was intention to hold these claims without writing the words "intent to hold", on a piece of paper.

(2) The 1979 Assessment work was completed and timely filed with the county recorder, further evidencing my intent to hold these claims.

(3) On Sept. 9, 1980, I filed the Assessment with the county recorder and a Notice of Intent to Hold and 1979 and 1980 Assessment papers with the B.L.M. as additional further evidence of my intent to hold these claims.

These same type arguments have been considered repeatedly by this Board and rejected.

The applicable regulations, 43 CFR 3833.2-2 and 3833.2-3, specify the required form for evidence of annual assessment work and a notice of intention to hold. A certificate of location will not suffice in either regard. William N. Barbat, 56 IBLA 26 (1981); Don Sagmoen, 50 IBLA 84 (1980); Paul S. Coupey, 35 IBLA 112 (1978).

[2] Moreover, accomplishment of a proper recording in the appropriate county office does not relieve the claimant from recording with BLM under the filing requirements of FLPMA and the implementing regulations. While under 43 CFR 3833.4(b) a defective or untimely recording under State law does not, of itself, constitute a failure to file under FLPMA, neither does a valid or timely filing with a county office constitute an acceptable filing under FLPMA. These are two separate filing requirements and compliance with one does not constitute compliance with the other. Lelia Fillimore, 50 IBLA 385 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge

APPENDIX A

<u>Claim Name</u>	<u>Location Date</u>	<u>Claim Number</u>
Fillin Nos. 1, 2	July 5, 1950	UMC 173832, 33
Cedar Hill Nos. 1, 2	September 30, 1937	UMC 173834, 35
Cedar Hill Nos. 3-6	September 30, 1937	UMC 173836-39
Cedar Hill No. 8	March 26, 1955	UMC 173840

